IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.252 OF 2003
IN
SUMMARY SUIT NO.224 OF 2003

M/s.Ramniklal S. Gosalia & Co. ...Plaintiffs
Vs.
M/s.M.R.Enterprises ...Defendants

Mr.R.M.Pande, Adv. for Plaintiffs
Mr.Madhav Jaindar, Adv. for Defendants

CORAM: D.G. DESHPANDE,J.
DATED: 15TH SEPTEMBER, 2004

P.C.

. Heard Advocate for the Plaintiffs and the Defendants. The Advocate for the Defendant raised preliminary objections to the effect that since the goods were to be delivered by the Plaintiffs at Ichalkaranji as per Exhibit-1 of his affidavit in reply and they were actually delivered at Ichalkaranji, cause of action arose about the jurisdiction of this Court. The Defendant is entitled to unconditional leave to defend.

. On the other hand Counsel for Plaintiff contended that the order was placed at Bombay, payment was made at Bombay and the goods were delivered to the Transporter at Bombay to be taken to Kolhapur. Therefore, according to him the delivery of the goods also took place within the jurisdiction of this Court. He has relied upon the Judgment of Patna High Court,

A.I.R., 1970, M/s. Matanhella Brothers and others Vs. M/s. Shri Mahabir Industries Pvt. Ltd. at page 1971. As against this Counsel for the Defendant contended that generally the statements of the Plaintiff's Advocate in this regard may be acceptable but when there is a specific agreement in the form of Exhibit-1 to the Affidavit in reply then the delivery can be stated to have been taken place only at Ichalkaranji. In any case this is a triable issue unconditional leave is granted to defend the suit. Written Statements/points of defence to be filed within a period of ten weeks from today. Discovery and inspection within two weeks thereafter. Suit to be placed on regular board for hearing thereafter.

. Summons for Judgment is disposed of.

. Parties to act upon the ordinary copy of this order duly authenticated by the Court Associate.

. C.C. expedited.

(D.G.DESHPANDE)

JUDGE